

REMARKS

Applicant's undersigned counsel thanks the Examiner for the very thorough and careful examination of the present application. Claims 25, 26, 29, 31-35 and 37 have been amended and new claims 38-50 have been added to more clearly describe the invention. No new matter has been entered. Claim 28 has been canceled, the limitations thereof now being incorporated into independent claim 25.

Claims 25, 31 and 32 have been rejected under 35 USC § 112, second paragraph for indefiniteness. These claims all have been amended to overcome the rejections under section 112. In particular, "at least consisting of" in claims 25 and 31 has been replaced with the more appropriate term "comprising." This substitution does not present new issues requiring further consideration or search because, as indicated in the Office action at paragraph 2, "[f]or purposes of examination, said limitation [at least consisting of] has been construed as comprising." In addition, the "as defined herein" language in claims 25 and 31 has been canceled. New dependent claims 41 and 42 have been added, depending from claims 25 and 31 respectively, which define a method for calculating the water permeability coefficient. Claim 32 has been amended to correct antecedent basis.

The "optionally" clauses in claims 25, 31 and 33 noted by the Examiner's Comments (page 3 of the Office action) have been canceled, their operative limitations now presented in new claims 38, 39 and 40.

In the Office action, the Examiner indicated that except for the issue of double patenting, claims 26, 28 and 33 would be allowable. See Office action, Examiner's Comments at page 3. The limitations of claim 28 have now been incorporated into claim 25 and claim 28 has been canceled. Claim 26 has been rewritten in independent form. Therefore, claims 25 and 26 as now written, and all dependencies therefrom, are now allowable except for the issue of double patenting which is addressed below.

Claims 25-30 and 34-37 have all been rejected under 35 USC § 101 on the ground of statutory double patenting over claims 17-25 of prior U.S. Patent No. 6,379,761.

Respectfully, this rejection is traversed. Comparing claim 17 of '761 with independent claims 25 and 34 of the present application (claim 34 is an independent method claim as explained below), the limitation "the transfer layer has a thickness below 30 micrometers" is present in claim 17 of '761, while claims 25 and 34 herein have no such limitation. Neither do any of the dependent claims depending from claims 25 and/or 34 herein add such a limitation. Therefore, claims 25 and 34 of the present application, and the dependencies therefrom, are of different scope than those cited in the '761 patent at least in that the present claims are broader in this respect (i.e. they recite no thickness limitation for a transfer layer). Accordingly, reconsideration and withdrawal of the statutory double patenting rejection is respectfully requested.

Claims 31-33 have been rejected under the judicially created doctrine of obviousness-type double patenting over claims 17-25 in U.S. Patent No. 6,379,761. Submitted herewith is a terminal disclaimer to overcome this obviousness-type double patenting rejection.

Claims 34-37 have been rejected under 35 USC § 102(b) as being anticipated by Dudzik. In making the rejection, the Examiner has not accorded the limitations of these claims patentable weight because, in the Examiner's view, these claims "recite method limitations which depend from a product claim." See Office action, paragraph 9. In sum, the Examiner appears to have treated claims 34-37 as product-by-process claims, and has accorded the method limitations therein "little to no" patentable weight. In fact, these claims are method claims, where claim 34 is an independent method claim for a "method of washing a container according to claim 25." In other words, claim 34 is for a "method for washing a container" comprising the recited steps of "placing...", "pumping...", and "at least periodically cleaning," (as amended) where the container is one "according to claim 25." Claims 35-37 are dependent method claims based on independent method claim 34. Accordingly, claims 34-37 are entitled to examination as method claims and method steps therein must be accorded patentable weight. Therefore, it is believed the rejection of

claims 34-37 have been overcome.

Claim 31 has been rejected under 35 USC § 102(b) as being allegedly anticipated by Dudzik. The rejection of this claim is respectfully traversed. Contrary to the Examiner's assertion, Dudzik nowhere discloses, teaches or suggests an ink-only label comprising "an ink-only image layer." Rather, Dudzik discloses a label structure having "a top layer *which can be printed and/or inscribed* and a water-soluble adhesive layer...." Dudzik, col. 1 lines 40-42. The passage in Dudzik cited by the Examiner (col. 1 lines 47-58) further teaches the "essential characteristic of the label according to the invention is the fact that the top layer...comprises polyvinyl alcohol." It is clear from this disclosure in Dudzik, and from a reading of that reference as a whole, that Dudzik discloses a label structure having a top layer that can be printed or imprinted with a design and an adhesive layer, where the top layer is transferred, with the image printed thereon, to a substrate as part of the label.

Conversely, the label in claim 31 is a "ink-only label." That term is defined in the specification as follows:

The term "ink only label" is used herein to define a label that does not have a paper or plastic backing, but which comprises an image layer of ink, which is directly applied to a surface." Specification, page 6 lines 28-31.

Hence, in the ink-only label of claim 31 the ink image layer is applied *directly* to the substrate surface with no intervening backing layer, whereas in Dudzik the image is first printed onto the separate "top layer," which is subsequently transferred to the substrate and is part of the as-applied label. Accordingly, Dudzik does not disclose or suggest the "ink-only label" as claimed in claim 31, and therefore the rejection of claim 31 is overcome.

In view of the foregoing, the rejections of claims 25 (now incorporating claim 28), 26, 31 and 34-37 have been overcome, and these claims are believed to be in condition for allowance. All remaining claims are dependent claims and are also believed to be allowable as such.

A Form 1449 listing 8 references was filed on February 28, 2002 but through an oversight was not initialed and returned to applicant. An extra copy of this Form 1449 is enclosed herewith and it is requested that an initialed copy be returned with the next communication.

If any fees are required by this communication which are not covered by the enclosed check, please charge such fees to our Deposit Account No. 16-0820, Order No. 30992US1.

Respectfully submitted,

PEARNE & GORDON LLP

By: John P. Murtaugh
John P. Murtaugh, Reg. No. 34226

1801 East 9th Street
Suite 1200
Cleveland, Ohio 44114-3108
(216) 579-1700

Date: 12-30-2003